

DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

ORIGINAL
RECEIVED

OCT 24 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Amendment of Section 73.202(b))
Table of Allotments)
FM Broadcast Stations)

(La Fayette, Georgia))

MM Docket No. 97-196
RM-9151

To: Chief, Allocations Branch

COMMENTS IN SUPPORT OF NOTICE OF PROPOSED RULE MAKING

Tennessee Instructional Radio ("TIR"), by its counsel, hereby submits its Comments in support of the Notice of Proposed Rule Making ("NPRM") released September 5, 1997, which seeks public comment on a proposal to amend the Commission's FM Table of Allotments to delete Channel 298A at La Fayette, Georgia.¹ In support of the NPRM, TIR states as follows:

1. On April 22, 1997, TIR filed a Petition for Rule Making (the "Petition") asking that the FCC delete Channel 298A at La Fayette, Georgia, because there are no possible site areas for which the Federal Aviation Administration will issue a determination of no hazard to air navigation. In fact, the FAA has twice concluded that operating on Channel 298A at La Fayette would cause harmful interference to air navigation due to electromagnetic interference (EMI).

¹ The NPRM states that comments are due October 27, 1997. Thus, these Comments are timely filed.

2. The Commission originally allotted Channel 298A at La Fayette effective February 3, 1992, and established March 5, 1992, as the application deadline. Radix Broadcasting, Inc. ("Radix"), the proponent of Channel 298A, filed an application for a construction permit on March 4, 1992. No other party submitted an application. Now, five and a half years later, Channel 298A is still vacant and Radix's application remains pending because it cannot obtain FAA approval.

3. TIR filed a Supplement to its Petition on August 11, 1997, which further supported the deletion of Channel 298A at La Fayette as a defective allotment. In its supplement, TIR stated that Radix's inability to find an FAA-approved site, coupled with an analysis of the available site area in reliance upon the FAA's Airspace Analysis computer model demonstrated that there are no sites from which Channel 298A could be constructed and satisfy the FAA's concerns for air safety. Specifically, TIR selected for further analysis five sites which are representative of the entire available site area for Channel 298A. Assuming operation of Channel 298A with minimal facilities at 0.1 kilowatts ERP, the FAA's computer model predicts that interference will occur to FAA navigational devices from all five sites. Based upon the FAA model, there are no sites at which Channel 298A could be constructed and satisfy the FAA's air safety concerns. Thus, Channel 298A is a defective allotment.

4. The Commission follows the general principle that a defective allotment should be deleted from the Table of Allotments. See e.g., Memorandum Opinion and Order, (Pine Knoll Shores, North Carolina, et. al.), 10 FCC Rcd 13159 (MMB 1995). In addition, deletion of the defective La Fayette allotment will avoid the possibility that the station at La Fayette is constructed and will interfere with FAA navigational devices, requiring the station to then go off the air. That is what happened last year to Mt. Juliet Broadcasting, Inc., the permittee of Station WNPL(FM) at Mt. Juliet, Tennessee. See Report & Order, (Mt. Juliet and Belle Meade, Tennessee), DA 97-1559, released July 25, 1997. In that case, the Commission issued a conditional construction permit that required Mt. Juliet Broadcasting to reduce power or cease operations if harmful interference to FAA instruments occurred. The permittee constructed the station and commenced operation only to learn that its operation interfered with air navigation at two local airports. Upon receiving a complaint from the FAA, the station ceased operating. Thus, the permittee expended considerable effort and expense to construct a facility that caused the interference the FAA predicted. See Report & Order, at ¶¶ 3, 6-7. For Channel 298A at La Fayette, the FAA also predicts that interference will occur to air navigation instruments, and TIR's further analysis using the FAA's computer model confirms similar results throughout the entire available site area. See TIR Supplement. Deleting the channel at La Fayette will prevent Radix

from suffering the same fate as Mt. Juliet Broadcasting, while freeing the spectrum for other, more efficient uses.

5. There is ample precedent for deleting a channel if the Commission subsequently concludes that the allotment is defective, even when an application for the defective allotment is pending. Several years ago the Commission deleted a channel after deciding that the community to which it was allotted did not qualify as a community for allotment purposes. Report and Order, (East Hemet, California, et. al.), 4 FCC Rcd 7859 (MMB 1989). The Commission was prompted to review the allotment when the licensee of an FM station proposed an upgrade to its facility which was short-spaced to the East Hemet allotment, and the licensee proposed the deletion of the East Hemet allotment. The Commission sought public comment on the proposed deletion, and found that parties in favor of retaining the East Hemet allotment (including an applicant) had failed to present sufficient evidence that East Hemet is a community. Thus, the Commission deleted the East Hemet allotment as defective despite the fact that at least one application for the allotment was pending at the time.

6. The deletion of the East Hemet allotment is not an anomaly. Two decades earlier the full Commission deleted several FM channels, including one for which two mutually exclusive applications were pending, because of possible interference to operations in the "quiet zone". Report and Order (Harrisonburg,

Virginia, et. al.), 6 FCC 2d 793 (1967). Ten years later the Broadcast Bureau reached a similar conclusion in Pinckneyville, Illinois, and deleted an allotment because no fully-spaced transmitter site was available. FM Channel Assignment at Pinckneyville, Ill., 41 RR 2d 69 (B/cast Bur. 1977).

7. More recently, in Report and Order (San Clemente, California), 10 FCC Rcd 8291 (MMB 1995), the Commission deleted an FM channel at San Clemente due to the unavailability of a fully-spaced, usable transmitter site. The deletion occurred long after the original channel allocation had become final, and after several applicants had spent 10 years fighting in a comparative hearing to obtain the construction permit.

8. The deletion of Channel 298A at La Fayette would not deprive La Fayette of local service. Station WQCH(AM) is licensed to Radix at La Fayette. However, deletion of Channel 298A would result in the dismissal of Radix's pending application. TIR understands that Radix does not object to the proposed channel deletion and the resulting dismissal of its application, and that it is filing comments in support of the proposed deletion.²

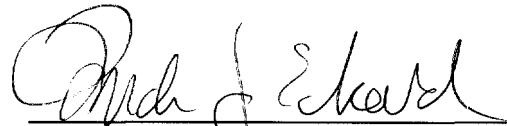
² Because Radix's application is cut-off, no other party may presently file for the La Fayette allotment.

WHEREFORE, for the reasons stated above, TIR requests that the Commission amend Section 73.202(b) to delete Channel 298A at La Fayette, Georgia, from the FM Table of Allotments.

Respectfully submitted,

TENNESSEE INSTRUCTIONAL RADIO

By:


Linda J. Eckard

Davis Wright Tremaine LLP
1155 Connecticut Avenue
Suite 700
Washington, D.C. 20036

Its Counsel

October 24, 1997

CERTIFICATE OF SERVICE

I, Vickie J. Ritter, a secretary in the firm of Davis Wright Tremaine LLP, do hereby certify that a true and correct copy of these **Comments in Support of Notice of Proposed Rule Making** was sent this 24th day of October, 1997, by first-class mail, postage prepaid, to the following:

John A. Karousos*
Chief, Allocations Branch
Mass Media Bureau
Federal Communications Commission
2000 M Street, NW
Room 554
Washington, DC 20554

Rich Gwyn
Radix Broadcasting, Inc.
P.O. Box 746
LaFayette, GA 30728

*By Hand


Vickie J. Ritter